



STATE OF ARKANSAS
**Department of Finance
and Administration**

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MEMORANDUM

To: All State Agencies, Boards, Commissions and Institutions of Higher Education

Attention: Professional Consulting Services Contracting Staff

From: Joe Giddis, Director
State Procurement

Date: June 19, 2002

Subject: Professional Consulting Services Contracts Policy and Procedures FY 03

Please pass this memorandum to those staff personnel responsible for processing Professional Consulting Services contracts.

The purpose of the memorandum is to provide policy guidance and establish procedures for Professional Consulting Services (PCS) contracts. The policy and procedures established in this memorandum are effective July 1, 2002. Agencies are encouraged to implement these changes as soon as practicable but in no case later than September 2002. The memorandum, along with other policy guidance and PCS regulations are posted on the OSP web page, which may be found at <http://www.state.ar.us/dfa/purchasing/index.html>. PCS contracting is located under the Professional Consulting Services "box".

PCS contracting forms going online! Agency staff personnel will be able to process all PCS contract forms, obtain signatures and transmit forms to OSP electronically. The program, including electronic signature validation, will be developed, tested, and piloted during the first half of this fiscal year. Our goal is to field the web based program through out the state by the end of FY 03. Information on our progress may be found on the OSP web page under the Professional Consulting Services box.

Definitions. We have all experienced misunderstandings when talking about PCS contracts. The following definitions are intended to establish a common understanding of the "language" of PCS contracting. Where possible, definitions have been extracted from the Directory of Purchasing Terms issued by the National Institute of Governmental Purchasing.

Sole Source-exempt by law: Those PCS contracts that are directed by proper legal authority, i.e. court ordered or directed by statute shall use the designation; "Sole Source-exempt by law". These are in addition to those sole source procurements, exempt by law in paragraph 4e of the Procurement Regulation.

Contract: 1) a legally binding promise enforceable by law; 2) an agreement between parties, with binding legal and moral force, usually exchanging goods or services for money or other consideration. A contract is developed through the use of a **procurement method**.

Procurement method: prescribed process by which services may be acquired, including but not limited to: 1) competitive bid; 2) request for proposal 3) request for qualifications; 4) sole source and 5) emergency. The procurement method of the original contract action shall follow that contract through out the life of that contract including any amendments.

Amendment for purposes of conformity will incorporate the definition used by NIGP for **modification:** any written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract. May include but is not limited to changes in the scope; dollar amount and contract term. Amendments to existing contracts are accomplished through the use of the PCS amendment form.

Contract term: the length of time for which a contract is in effect. PCS contracts are limited by state statute to one year, but in the unusual event that the best interests of the state would be served by a contract that exceeds one year, the Chief Fiscal Officer of the State or his designee may approve such contract after first having received the advise of the Legislative Council or Joint Budget Committee.

Extension: time added to the length of an existing contract through the use of the PCS amendment form. Extensions must be by mutual agreement of both contacting parties in writing prior to the contract expiration date. Expired contracts may not be extended. "Renewal" and "rollover" are sometimes used synonymously with "extension", but for clarity and conformity, the term "extension" shall be used.

Biennium: the two-year period for which the State Legislature appropriates funds. The **contract term** of a professional and consultant service contract may not cross the biennium without a non-appropriation clause which specifies that in the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of the contract for the services to be provided by the contractor, the contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purpose.

Legislative Changes - The Office of State Procurement has begun working on legislative initiatives for the upcoming session aimed at providing additional guidance to the PCS contracting process. If you are interested in assisting in this effort, or have recommended legislative changes, please contact Jerry Hester at jerry.hester@dfa.state.ar.us.

Services: A number of services that have been purchased using PCS contracting procedures are more appropriately purchased as technical services under the Arkansas Procurement law, policy and regulations. Following is a listing of services that are no longer appropriate for PCS contracting;

translator, collection, process server, transport services, actuarial services

These for the most part are technical in nature but have on frequent occasions been purchased as a professional and consultant service. If your agency is in the process of developing a contract and doubt exists as to whether it should be designated PCS or technical in nature, please contact jerry.hester@dfa.state.ar.us for assistance prior to developing the contract.

AASIS PCS Contracts Guide. On the OSP web page under the Professional Consulting Services and in the “What’s New” boxes, we have provided an [AASIS PCS Contract Guide](#) on entering outline agreement/release order document. This provides a step-by-step process for entering into AASIS PCS contracts and allowing for the proper tracking of funds obligated as well as expensed for a specific contract. Agencies using the Outline Agreement (ME31K) will use the Outline Agreement number as their PSC Contract #. All AASIS agencies and service bureau agencies, beginning July 1, 2002, should use this process for PCS contracts. Agencies may elect to use the AASIS “purchase order” method (ME21N transaction) prior to submission of the contract to OSP for review/approval and using the assigned AASIS purchase order number as the PCS contract number. Agencies using this methodology should ensure that all AASIS POs corresponding to a PCS contract are properly designated as “PB” and “PCS” in the appropriate reference fields. The AASIS help desk is available to answer questions as is Nancy Cothren at nancy.cothren@dfa.state.ar.us. Contract numbers for PCS contracts will be assigned by the AASIS system as they are entered. Contract personnel will need to ensure that they use that number on all PCS contract documents.

Contract Number for reporting agencies only: a unique number entered on each PCS contract composed of “RA” (for reporting agency) and the last two digits of the year fiscal year the contract begins (02) followed by the agency number followed by an internal sequence number issued by the respective agency representing the order in which the contracts are issued during the fiscal year (0001; 0002, etc.). Please note that this process will be replaced when PCS contracts go on-line. A computer program will automatically assign contract numbers.

PCS Forms The new PCS contract form, amendment and instruction sheet is posted on the OSP website under [PCS Law, Regulations and Contract Forms](#). Colleges, universities and state agencies may concurrently use both the older and newer PCS forms until August 31, 2002. From that date forward, the new contract and amendment form will be required for processing PCS contracts.

Use of the PCS Form and Amendment As a result of instructions issued by the Legislative Council Review Committee during the May 1, 2002 meeting, new PCS contracts are to be executed using the full PCS contract form. Changes to existing contracts, including extensions, alterations in scope and/or increases in the dollar amount require the use of the PCS amendment form. Beginning July 1, 2002, the practice of “renewing” or “rolling over” contracts will be discontinued. Contracts will be established by using a prescribed procurement method and may be extended by using the PCS contract amendment form. Contracts, forwarded to the Office of State Procurement for approval, that are advertised to meet the sole source requirement of “public notice of intent to award” must be accompanied by a copy of the advertisement along with a schedule of the dates the ad was published.

Procedures for Approval of Data Processing or Telecommunications Planning or Services contracts. Paragraph 7 of the Professional Consulting Services regulations require Executive Chief Information Officer (ECIO) recommendation and approval of contracts for data processing, management systems, or telecommunications equipment planning or services prior to submitting the contract to the Office of State Procurement. This provision has been frequently overlooked in the processing of contracts for these services. Please plan accordingly. New contracts or extensions of contracts that do not have the review of the ECIO will be returned to the agency.

Extension of PCS contracts. Professional and Consultant Service Contracts may only be extended if language authorizing the extension is included in the original contract agreement. The extension

language must be specific as to the number of times the contract may be extended and the length of time authorized for each extension, and, with exception of construction contracts, the original contract and all periods of extension shall not exceed seven years. Contract extensions should only be made when prevailing market conditions indicate that to do otherwise would not be in the best interests of the State. Any contract extension in which the rate of compensation increases from the previous contract period, must be accompanied by language contained within the original contract agreement authorizing such increase. Current Grant Disclosure and Certification Form (s) (Executive Order 98-04) must accompany any amendment extending the term of a contract that was originally subject to disclosure or which increases the dollar amount of the contract to the level which makes it subject to disclosure. Intergovernmental agreements are exempt from the disclosure requirement.

Legislative Council Staff request: The legislative council staff requires one copy of PCS contracts for review by the Review Subcommittee. Agencies will only be required to provide the original and one copy of PCS contracts to OSP for review/approval. OSP will forward to the legislative council staff one copy of the PCS contract. Agencies are responsible for ensuring the accuracy of the information on the contract to include the appropriation code(s), math, and that disclosure forms are enclosed and properly completed.

Beat the Rush. While we realize long lead times are involved in PCS contract preparation, it is not necessary for agencies to wait until the last quarter of the fiscal year to complete PCS contracts. As soon as appropriations are confirmed the PCS contracting forms should be completed and forward to OSP for review/approval. The AASIS system allows for contracts to be prepared, reviewed/approved and then executed at a later date. We will, periodically through out the year, remind agencies to process their PCS contracts for FY 04 for review/approval and forwarding to the Review Committee.

Cc:

Sen. Jon Fitch, Co-Chair Review Sub-Committee

Rep. David Hausam, Co-Chair Review Sub-Committee

Richard Weiss

Tim Leathers

Tony Vogelgesang